Dong-A Daily North America, Inc. ***and*** **Korean Immigrant Workers Advocates.** Case 31–CA–24127

September 12, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

Upon a charge and amended charges filed by the Union on September 20 and December 16, 1999, and January 14 and February 25, 2000, the General Counsel of the National Labor Relations Board issued a complaint on February 29, 2000, against Dong-A Daily North America, Inc., the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file a timely answer.

On March 28, 2000, the General Counsel filed a Motion for Summary Judgment with the Board. On March 30, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 13, 2000, the Respondent filed a response to the Notice to Show Cause, with an answer attached.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated March 14, 2000, notified the Respondent that unless an answer was received by March 20, 2000, a Motion for Summary Judgment would be filed.

In its opposition to the Notice to Show Cause, the Respondent asserts that, about February 18, 2000, prior to the issuance of the complaint, Respondent's counsel, David P. Christianson, contacted the counsel for the General Counsel and stated that the Respondent had closed and that he had lost contact with the Respondent.[1] He further requested that his name be removed from representation. During this time period, according to the Respondent, the Company was in "major turmoil" due to the closing of its Los Angeles office and the "departure of all key employees." Because he was not attorney of record at the time the complaint was filed, Christianson was not served with a copy of the complaint.

The Respondent asserts in opposing summary judgment that the Company's owner, Suk S. Lee, attempted to investigate the complaint, but that doing so was "virtually impossible since none of the employees allegedly involved continued to be employed by the company and could not be contacted." Subsequently, after the time for filing the complaint had expired, according to the Respondent, Lee's investigation determined that there was no truth in the allegations contained in the complaint. The Respondent asserts that Lee then contacted Christianson and requested that he file an answer. Christianson promptly filed an answer to the complaint. A copy of the answer, dated April 3, 2000, after the Motion for Summary Judgment was filed, is attached to the Respondent's opposition to the Notice to Show Cause. The Respondent argues that, previous to February 18, 2000, it cooperated with NLRB Regional counsel in his investigation, and that the "turmoil of the sudden closing of the Los Angeles office together with the departure of all key employees" resulted in the failure to timely file the required answer. Further, the Respondent argues it "has a good and substantial defense in that there is no merit to the charge." Under these circumstances, the Respondent contends that good cause excusing its failure to file a timely answer to the complaint has been demonstrated.

We disagree with the Respondent's assertions that good cause has been demonstrated and grant the General Counsel's Motion for Summary Judgment. The Respondent's closing of its Los Angeles office does not constitute good cause for the failure to file a timely answer.[2] In this vein, the Respondent also cites company turmoil and the departure of key employees as making it "virtually impossible" to answer the complaint. It is well settled, however, that "preoccup[ation] with other aspects of [the] business" does not constitute good cause for a party's failure to file a timely answer.[3] Similarly, the Board has rejected claims of "economic necessity[,]"[4]

[1] Telephone numbers in Los Angeles and Illinois had been disconnected and Christianson's messenger service reported that the Respondent's Los Angeles office was closed.

[2] *Kelly Food Products,* 323 NLRB 671 (1997) (rejecting as constituting good cause response from bankruptcy trustee that the respondent had shut down and ceased doing business and had no assets).

[3] *Lee & Sons Tree Service*, 282 NLRB 905 (1987). See also *Urban Laboratories, Inc.*, 249 NLRB 867, 868 (1980) (rejecting the arguments that a company's bitter stockholders' dispute that "consum[ed] nearly all" of the company president's time, and the failure of the company's personnel to keep the president informed about the nature of the proceeding, constituted good cause for failure to file a timely answer).

[4] *Monroe Furniture Co.,* 231 NLRB 143, 144 (1977).

"dire financial straits"[5] and the institution of bankruptcy proceedings[6] as constituting good cause. Therefore, we reject the Respondent's argument that the closing of its office and company turmoil constitute good cause for the failure to file a timely answer.[7]

Further, although the Respondent argues that it should be excused for failing to file a timely answer because it cooperated with counsel for the General Counsel during precomplaint stages, the Board has rejected this as constituting good cause.[8] The Board also has stated that it will not address a respondent's assertion that it has a meritorious defense if good cause has not otherwise been demonstrated.[9] In addition, the Board has stated that a party's "failure to promptly request an extension of time to file an answer is a factor demonstrating lack of good cause."[10] Here, the Respondent makes no claim that at any time it attempted to contact the Regional Office to request an extension of time to file an answer.[11]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

[5] *National Transit*, 299 NLRB 453 (1990).

[6] *Sorenson Industries,* 290 NLRB 1132 (1988).

[7] As the Board recently explained in *M. J. Wood & Associates*, 325 NLRB 1065, 1066 fn. 5 (1998), a respondent that "is without knowledge" of facts alleged in a complaint need only state that it is "without knowledge," and the Board will treat that statement as a denial. Thus, to the extent that the Respondent here argues that the absence of key employees prevented it from answering the complaint, that argument is rejected. See also *American Gem Sprinkler Co.*, 316 NLRB 102 (1995) (in rejecting the argument that inaccessibility to company records prevented the respondent from answering a complaint, Board stated that a party need only assert that it is "without knowledge" of facts concerning an allegation).

[8] *Air Tech Services,* 323 NLRB 919 (1997). See also *Sorenson*, 290 NLRB at 1133 ("[t]o permit this to constitute good cause would effectively nullify the requirements of Section 120.20 [sic] for any respondent that cooperated at the investigatory stage").

[9] *Printing Methods, Inc.*, 289 NLRB 1231, 1232 fn. 4 (1988) (Board declines to examine the answer or otherwise address the respondent's contention that it raised a meritorious defense in determining that good cause was not demonstrated).

[10] *Day & Zimmerman Services*, 325 NLRB 1046, 1047 (1998).

[11] The underlying facts here are similar to those addressed by the Board in *Urban Laboratories*, supra. There, a pro se respondent failed to file a timely answer and, upon retaining counsel, filed an answer along with its opposition to the General Counsel's Motion for Summary Judgment. Despite the respondent's pro se status, the Board stated that the respondent had failed to contact the Regional Office to request an extension of time to file an answer. The Board also rejected as constituting good cause the arguments that the respondent was involved in a stockholders' dispute and that no party would be prejudiced by excusing the respondent's failure to file a timely answer.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Los Angeles, California (the facility), and an office and place of business in Chicago, Illinois, has been engaged in publishing a Korean-language newspaper. During the 12-month period ending December 31, 1999, the Respondent, in conducting its business operations, derived gross revenues in excess of $200,000 and advertised various nationally sold products, such as cars and trucks made by the Ford Motor Co. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of the Respondent within the meaning of Section 2(13) of the Act and/or supervisors within the meaning of Section 2(11) of the Act:

Dr. Suk S. Lee	President
Michael Hurh	General Manager
Sung Ho Hong	Editor-in-Chief

About June 15, 1999, the Respondent, by Sung Ho Hong, at the facility:

(a) Created an impression among its employees that their concerted activities were under surveillance by the Respondent.

(b) Interrogated its employees about their concerted activities.

(c) Interfered with its employees' rights to engage in concerted activities.

(d) Threatened its employees with discipline because they engaged in concerted activities.

About June 16, 1999, the Respondent, by Sung Ho Hong, at the Denny's restaurant located on Wilshire Boulevard near the facility:

(a) Interfered with its employees' concerted activities.

(b) Impliedly threatened its employees with unspecified reprisals for engaging in concerted activity.

About June 16, 1999, the Respondent, by Sung Ho Hong at the facility, threatened its employees with discipline because they engaged in concerted activity.

About June 21, 1999, the Respondent, by Michael Hurh, at the facility:

(a) Interfered with its employees' right to engage in concerted activities.

(b) Impliedly threatened its employees with discipline for engaging in concerted activity.

(c) Threatened its employees with discipline for engaging in concerted activity.

(d) Threatened its employees with discharge for engaging in concerted activity.

In early July 1999, the Respondent, by Michael Hurh, at the Denny's restaurant located on Wilshire Boulevard near the facility, threatened its employees with transfer and layoff for engaging in concerted activity.

About July 13, 1999, the Respondent, by Dr. Suk S. Lee:

(a) Interfered with its employees' right to engage in concerted activity.

(b) Impliedly threatened its employees with discipline for engaging in concerted activity.

About July 14, 1999, the Respondent, by Sung Ho Hong, interfered with its employees' right to engage in concerted activity.

About June 15, 1999, the Respondent's employees, including Yong Seok Kang, concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees, by submitting a petition calling for an improved personnel policy.

About June 18, 1999, the Respondent demoted and transferred Yong Seok Kang, and since that date has failed to reinstate him to his former position of employment. About July 13, 1999, the Respondent discharged Yong Seok Kang, and since that date has failed to reinstate him to his former position of employment.

The Respondent engaged in the conduct described above because Yong Seok Kang engaged in protected concerted activities and to discourage employees from engaging in these or other protected concerted activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) of the Act by demoting, transferring and discharging employee Yong Seok Kang, we shall order the Respondent to offer the discriminatee full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful demotion, transfer, and discharge, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Dong-A Daily North America, Inc., Los Angeles, California, and Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Creating the impression that its employees' concerted activities are under surveillance.

(b) Interrogating its employees about their concerted activities.

(c) Interfering with its employees' concerted activities or their right to engage in concerted activities.

(d) Threatening its employees with discipline for engaging in concerted activities.

(e) Threatening its employees with discharge for engaging in concerted activity.

(f) Impliedly threatening its employees with unspecified reprisals or discipline for engaging in concerted activity.

(g) Threatening its employees with transfer and layoff for engaging in concerted activity.

(h) Demoting and transferring its employees and failing to reinstate them to their former positions of employment because of their concerted activities.

(i) Discharging its employees and failing to reinstate them to their former positions of employment because of their concerted activities.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer to Yong Seok Kang full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Yong Seok Kang whole for any loss of earnings and other benefits resulting from his unlawful demotion, transfer and discharge, less any interim earnings, plus interest.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful demotion,

transfer, and discharge of Yong Seok Kang, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful demotion, transfer, and discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Los Angeles, California, copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 15, 1999.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT create the impression that our employees' concerted activities are under surveillance.

WE WILL NOT interrogate our employees about their concerted activities.

WE WILL NOT interfere with our employees' concerted activities or their right to engage in concerted activities.

WE WILL NOT threaten our employees with discipline for engaging in concerted activities.

WE WILL NOT threaten our employees with discharge for engaging in concerted activities.

WE WILL NOT impliedly threaten our employees with unspecified reprisals or discipline for engaging in concerted activity.

WE WILL NOT threaten our employees with transfer and layoff for engaging in concerted activity.

WE WILL NOT demote and transfer our employees and fail to reinstate them because of their concerted activities.

WE WILL NOT discharge our employees and fail to reinstate them because of their concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Yong Seok Kang full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Yong Seok Kang whole for any loss of earnings and other benefits resulting from his unlawful demotion, transfer, and discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful demotion, transfer, and discharge of Yong Seok Kang, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful demotion, transfer and discharge will not be used against him in any way.

DONG-A DAILY NORTH AMERICA, INC.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."